

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0176
Sales and Use Tax
For the Tax Period 2001-2003**

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ISSUES

I. Sales and Use Tax- Imposition of Sales Tax on Docks and Cattle Crossings

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, 45 IAC 2.2-3-8, 45 IAC 2.2-3-9(b), Sales Tax Information Bulletin #60.

The taxpayer protests the assessment of sales tax on the sale of certain docks and cattle crossings.

II. Tax Administration- Ten Per Cent (10%) Negligence Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer is a corporation that engages in the sale and rental of tangible personal property. The taxpayer also acts as a contractor in certain situations. After an audit, the Indiana Department of Revenue (department) assessed additional sales and use tax for the tax period 2001-2003. The taxpayer agreed with some of the assessed items and protested the remainder of the assessment. A hearing was held and this Letter of Findings results.

I. Sales and Use Tax-Imposition of Sales Tax on Docks and Cattle Crossings

Discussion

The taxpayer's first protest concerns the imposition of tax on certain docks sold by the taxpayer. The auditor described these docks as follows:

One group of items was of special interest. The taxpayer had fabricated and then sold what were referred to as "docks" to a tenant of "A"[name redacted for confidentiality purposes] that was/is leasing several storage units known as

“igloos.” These docks allow the tenant to use a forklift for the loading and unloading of materials from their truck to the igloo and are nothing more than a ramp or “dock leveler.” The ten foot by ten foot concrete slab immediately outside the door of the igloo is the loading/un-loading dock. The item being sold by the taxpayer merely facilitates their customer’s use of forklifts rather than other means of transporting materials to and from their storage units to tractor trailers. It is not permanently affixed to the building or to the concrete loading dock, but is merely staked into the ground to reduce movement if it is bumped by the tractor trailer which is being loaded or unloaded.

The items above are distinctively different from the “portable” docks which the taxpayer leases to tenants of “A”. These items are equipped with hitches and wheels to allow for them to be moved to lessees’ location with ease.

The taxpayer contends that the items are real property because he was acting as a contractor when he had the docks/ramps built, the customer was billed a “guaranteed price” and that they would be difficult to relocate. Even so, they do not become real property, but remain tangible personal property and are subject to tax as such.

The taxpayer agreed with the department’s descriptions of the “docks”. However, the taxpayer argued that the items were not personal property as argued by the department. Rather, the taxpayer contended that the docks became part of the real property. Customers requested the building of the subject docks because the concrete docks were a different height than the back of the trucks. The improvements to the concrete docks accommodated the higher loading/unloading height of the trucks.

The taxpayer also protested the assessment of sales tax on its sales of cattle crossings. These are steel grates that cows refuse to walk on. The crossings are attached to the road at a point where the gate on a fence would open.

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

Indiana imposes a sales tax on the transfers of tangible personal property for consideration by retail merchants in Indiana unless the transfer qualifies for a statutory exemption. The sellers of the property are required to collect the sales tax from the purchasers and remit that tax to the state. IC 6-2.5-2-1. Pursuant to this statute, the department assessed sales tax on the taxpayer’s sales of certain docks and cattle crossings. The taxpayer contended that the department erred in imposing the sales tax on these sales because they were incorporated into and became a permanent part of the real estate.

The application of the sales tax to tangible personal property is discussed at 45 IAC 2.2-3-8 as follows:

(a) In general, all sales of tangible personal property are taxable, and all sales of real property are not taxable. The conversion of tangible personal property

into realty does not relieve the taxpayer from a liability for owing and unpaid state gross retail tax or use tax with respect to such tangible personal property. (b) All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition unless the ultimate recipient could have purchased it exempt.

The Regulations explain the responsibility of a contractor concerning the payment of sales tax on tangible personal property at 45 IAC 2.2-3-9(b) as follows:

A contractor who purchases construction material exempt from the state gross retail tax or otherwise acquires construction material “tax-free”, is accountable to the Department of Revenue for the state gross retail tax when he disposes of such property.

For the purposes of the imposition of sales tax on tangible personal property, an improvement to real estate is defined in Sales Tax Information Bulletin #60 as follow:

E. ‘Improvements to real estate’ means that personal property has been incorporated into and becomes a permanent part of the real property. To accomplish this, the personal property generally takes on an immovable character. An immovable fixture is characterized by three elements:

- (1) Real or constructive annexation of the article in question to the land.
- (2) Adaptation of the personal property as part of the land.
- (3) The intention of the party making the annexation to make the personal property a permanent part of the land so that it would pass with the land upon a sale.

Examples of installations that constitute improvements to realty are: doors, garage doors, garage door openers, windows, cabinets, garbage disposals, water heaters, water softeners, alarms, furnaces, central air conditioning units, gutters, and carpeting.

Examples of installations that do not constitute improvements to realty are: personal computers, home stereos, televisions, refrigerators, stoves, dishwashers, garbage compactors, washers, dryers, and window air conditioning units.

The taxpayer provided substantial documentation that the tangible personal property was incorporated into realty pursuant to a construction contract. The property became a permanent and an immovable part of the real estate. It would pass with the real property on sale.

The taxpayer acted as a contractor in the attachment of the protested docks and cattle crossings to the customers’ real estate. The taxpayer acquired the tangible personal property without paying

tax on the purchase. Also, the taxpayer did not charge sales tax on the tangible personal property sold to its customers. Therefore, pursuant to the provisions of 45 IAC 2.2-3-9(b), the taxpayer is accountable to the department for the sales tax on tangible personal property it incorporated into its customers' real estate.

Finding

The taxpayer's protest is denied.

II. Tax Administration- Ten Percent (10%) Negligence Penalty

Discussion

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer disregarded the law and department instructions to pay sales or use tax on clearly taxable items such as copiers, cleaning supplies, mulch and a tractor mower. These breaches of the taxpayer's duty constitute negligence.

Finding

The taxpayer's protest to the imposition of the ten per cent penalty is denied.